IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3237 OF 2004

IN

CRIMINAL APPEAL NO.360 OF 2004

Ganeshsing Sudarsing Chavan ..Applicant

Versus

The State of Maharashtra ..Respondent
(through the PSO, Vijapur Naka
P.S., Solapur).

Mr.S.V.Marwadi for the applicant.

Smt.U.V.Kejriwal, APP for the Respondent-State.

Coram : S.S.Parkar &
R.S.Mohite,JJ

Date : 1st September, 2004.

PC

. Heard the learned Advocate for the applicant and learned APP for the Respondent-State.

1. The applicant is convicted for having committed murder of his own wife. The witnesses from the neighbourhood have turned hostile. It is argued on behalf of the applicant that there is no evidence on record which involved the applicant in the murder of his wife. It is contended that in the absence of any prima facie evidence against the accused, the trial court has convicted him on the ground that the

applicant had not proved the defence of Alibi. He relied on the Judgment of the Supreme Court in the case of **Binay Kumar Singh V/s. State of Bihar** reported in AIR 1997 SUPREME COURT 322, in which it is held that initial burden lies on the prosecution to prove that the accused was present at the scene and had participated in the crime. It is stated that applicant had 2 kids aged about 3 and 1 @ 1/2 years at the time of incident in March-2003 and he is in custody since then.

2. In the circumstances, application is allowed. The applicant is directed to be released on bail in the sum of Rs.25,000/- with one or two sureties in the like amount.

(S.S.Parkar,J)

(R.S.Mohite,J)